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UNIVERSITE MCGILL FACULTE DE DROIT

October 21, 1991
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The Good, the Bad and the Ugly

By Michael Wilhelmson, NAT IV

The charge of sexual harassment against Clarence Thomas, presidential nominee to the U.S. Supreme Court, touched a raw nerve in North American society and exposed the dark side of male/female relations. In watching hour after hour of the hearings, I was reminded that if one's political vision of the world is not defined by one's status as a worker or by one's race or culture, then we can always count on sex as a source of distrust.

The politically charged, high-tech hearings south of the border were perhaps not the best way to come to terms with the issue. Every one has an opinion on the facts of the case, although the Athenian-style trial with its inter-twining of politics and law will not settle what did not occur.

A more accessible point is the politics of perception. The good and bad in my title do not refer to any one in particular. One observes and affixes the labels to the characters in a political drama according to the results one wishes to achieve, results based on a desire to maximize power, either offensively or defensively.

The sexes do not break into two solid camps on the political perception of the hearing, although U.S. polls indicated that first impressions of guilt or innocence followed a sexual standard. On the same express facts, men thought Thomas was innocent. Women thought Thomas was guilty.

In discussing the hearings with some women friends and in listening to the arguments before the Senate committee,

one can understand how the breakdown occurred.

Women begin with strong first hand or second hand awareness of the reality of sexual harassment and its effect upon the victim and women generally. Women are aware of the power imbalance between the sexes. Women know how difficult sexual harassment is to handle and how difficult it is to seek redress. The large number of women appearing before the committee who had personal experience with sexual harassment attests to the problem. More importantly, women find it easier to place themselves in the shoes of the victim. They see the public charge as a courageous act and proof of its veracity. This is all part of the feminist under

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L'ART DE RATER SA SORTIE

By Pierre Soulard, BCL III

Les anciens chefs d'états tirent une grande satisfaction du fait de voir certains de leurs accomplissements majeurs survivre à leur règne. Poussés par cette quête quasi-obsessionnelle d'une place favorable au sein de l'histoire certains n'hésiteront malheureusement pas à commettre des actes incohérents, si non contradictoires, avec leurs actions passées dans le but de préserver leur image.

A la lumière de ce qui précède, les dernières déclarations de l'ancien Premier ministre Trudeau, à l'effet que la reconnaissance d'une forme de caractère distinct pour le Québec pourrait entraîner la déportation des non-francophones, semblent beaucoup plus teintées de la frustration de voir son héritage se désagréger que de la froide analyse politico-juridique dont il se targuait d'être le disciple lors de ses années de pouvoir. Combien de fois s'est-il servit des Suite

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ANNOUNCEMENTS/ANNNONCES

Lawyers for social responsibilities- presents on Wednesday, October 23 in Room 201 a forum of Montreal's Black community leaders. The speakers will be Dan Phillip and Kiven Tunting and they will talk about Racism and the Law. All are invited to attend.

Le Prix PAJLO- Le Programme national de l'administration de la justice dans les deux langues officielles (PAJLO) oeuvre depuis maintenant dix ans à la promotion et à l'utilisation des deux langues officielles du Canada dans le domaine du droit. Pour atteindre cet objectif, le PAJLO et ses organismes membres ou participants ont uni leurs efforts pour que, de plus en plus, la common law soit accessible en langue française et le droit civil en langue anglaise. Voulant faire partager son idéal aux futures juristes et les encourager à profiter de la richesse que représente le caractère bilingue et bilingue du pays, le PAJLO, en coopération avec l'Association du Barreau canadien, offre à la meilleure dissertation de common law en français et l'autre à la meilleure dissertation de droit civil en anglais. For more information contact Associate dean Stephen Toope.

Le Prix des Cahiers de propriété intellectuelle- La Société des Cahiers de propriété intellectuelle

Inc., éditrice des *Cahiers de propriété intellectuelle*, vise, entre autres, à encourager la recherche et la rédaction en matière de droits de propriété intellectuelle. À ce titre, elle offre un prix pour le meilleur texte de recherche réalisé dans ce domaine par un(e) étudiant(e) en droit ou en sciences juridiques. Un prix de 500\$ est remis à l'auteur(e) du texte retenu par le jury. Le texte primé pourra être publié dans *Les Cahiers de propriété intellectuelle* et, à cet effet, l'étudiant(e) s'engage, par sa participation au Prix, à accorder à la revue l'autorisation de publication. Le texte de la recherche soumis par l'étudiant(e) doit être conforme aux exigences suivantes, entre autres: être en langue française et avoir été réalisé entre le 1er juin et le 31 mai de chaque année. For more information contact Associate Dean Stephen Toope.

GRAD PHOTOS- kGraduation photos will be taken on November 5th and 6th in the common room here in the faculty. It will cost 29,00\$ for a sitting and you must bring the money with you at the time of your appointment. Sign-ups will take place in the L.S.A. office as of October 9th. Gentlemen are asked to wear a shirt and tie. As for ladies, white collared blouses photograph exceptionally well. Start practicing your smile in the bathroom mirror. Any questions? See your

friendly neighbourhood grad. committee.

LEGAL THEORY WORKSHOP- Friday October 25th, 12:00 noon in the Moot Court, Professor Susan Moller Okin of Stanford University will be speaking on «Gender, Justice and Cultural Differences». Professor Okin is a leading writer in the feminist analysis of issues of distributive justice, specifically justice within the family.

LEGAL THEORY WORKSHOP- Wednesday October 23rd, 12:00 in room 202 Professor V. Cepl will be talking on the topic of «The Road out of Serfdom».

MEDICINE AND LAW- Wednesday October 23rd, 19h30-21h30 in the Moot Court, there will be a lecture on the topic of «The doctor as an ordinary witness and as an expert witness. Impact of a lawsuit on a doctor».

McGILL QUÉBEC - McGill-Québec tiendra son premier café-causerie jeudi le 24 octobre au Thomson House à 14h00. L'invité sera M. Jacques-Yvan Morin, prof de droit à l'univ. de Mtl. et ancien ministre péquiste, qui discutera de la question constitutionnelle et de ses ramifications en droit international.

RACISM AND THE LAW:

THE BLACK COMMUNITY RESPONDS

By Moray Welch, LLB II

The Lawyers for Social Responsibility present on Wednesday, October 23 in Room 201 a forum of Montreal's Black community leaders. Recent events - the killing of Marcelus François is only the most notorious example- have focussed attention on the unease in the community, especially as regards their treatment at the hands of the police. Within the community, there is renewed debate and renewed resolve. The forum will address some of the problems they face in trying to get justice.

Dan Phillip will discuss the killing of Marcelus François and the handling of the subsequent inquest. Mr. Phillip is the President of the Black Coalition of

Québec. Also present at the forum will be Kiven Tunting who will discuss the efforts of the Black Community Council of Québec to address the legal problems facing the community. Mr. Tunting is the Director of the B.C.C.Q. legal clinic. Mr. Phillip and Mr. Tunting will each speak for about twenty minutes. There will be time allotted for questions, and refreshments will be served.

This is the L.S.R.'s first public forum of the year. We invite you to attend and to participate in the discussion. L.S.R. has been an important focus for student involvement at McGill for a number of years. We are a national organization of lawyers and law students whose common ground is dedication to world peace. Such a focus is wide enough to welcome

all sorts of particular interests and activities. Last year, among other activities, we held a round table on the Gulf war which included an international lawyer, a political scientist, an economist and a media specialist. We invited an international law expert to speak on the law of the Intifada and an ex-British soldier to speak on the conflict in Northern Ireland. Of course, we also dusted off our banner and marched around downtown a fair bit.

This year, on November 6, we will welcome Michael Mandel to speak on the Charter. Mr. Mandel is Professor of Law at Osgoode Hall and a noted critic of the Charter. In the spring, we are planning to invite members of Montréal's legal aid

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GREEN SPACE

By Janet Bolton, LLB III

One cold day last winter, a friend of mine decided that he would bend over to pick up an empty Coke can that he saw lying around in the gutter. Shivering, he walked into the nearby Provigo and redeemed the can for a five cent refund, which he later handed over to a woman who was begging on the street. Picking up the can was my friend's small contribution to cleaning up the city, assisting the recycling effort and helping someone in need. Now, eighty dollars and sixteen hundred cans later, my friend is wondering whether anyone else gives a damn.

The point of this story is not to encourage

you to roam the streets in search of cans. Lord knows, my friend doesn't need the competition. My point is to illustrate the apathy with which most of us approach recycling. We are too lazy or too busy or too tired to make any conscious effort; recycling depots and «blue boxes» are too far away for us to get to. Even the financial incentive of a five or ten cent refund is not sufficient to incite us to act. And so we toss our newspapers, our bottles and our cans into the nearest trash can, or onto the street, without giving a second thought to the environmental consequences. The problem is not one of access. It is one of action.

It takes five percent of the energy to recycle an aluminum can as it does to manufacture a new one. Making new

products out of old produces less than one-tenth the acid rain created by making the same products from raw materials: Pollution Probe Foundation, *The Canadian Green Consumer Guide* (Toronto: McLelland & Stewart, 1989). Recycling is clearly worth the effort. And it does take an effort. We must collect our cans in the nearest recycling depot. We must think twice about buying that «bargain» notepaper which costs ten cents less than the recycled brand. We must lobby our government to subsidize recycling programs in areas where they are not yet profitable. Recycling will only be successful if everyone contributes.

So, the next time that you prepare to drop-kick your empty Coke can into the garbage at the back of the classroom, stop and think for a moment. Then, carry it down to the recycling box in the pit. Or take it to Provigo and cash it for a refund. Maybe you'll even see my friend there....

Movie Review:

DEAD AGAIN

By Nancy Girard, BCL II

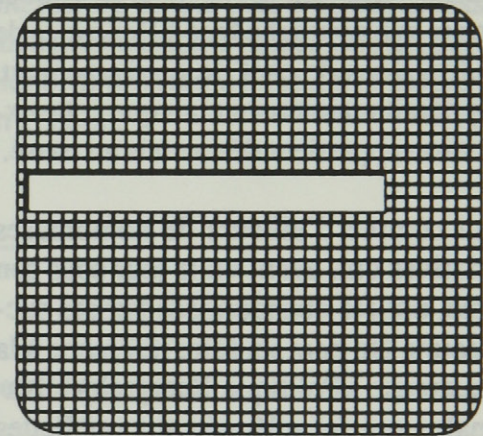
Dead Again is as different from *Henry the VIIIth* as it could be. The movie opens with Kenneth Branagh showing off his newly acquired american accent in the role of a private investigator. He is called in to unravel the past of a mysterious amnesic played convincingly (most of the time) by Emma Thompson. The action takes place today but there is a twist....Branagh and his real-life wife Thompson also play the roles respectively of a conductor and violinist who lived about forty years ago. As a result, the drama shifts constantly from one era to the next (and from color to black and white) with the two actors also shifting from one role to the next.

It is the unlikely intervention of a hypno-

tist which helps unminge the jumble and link the two sub-plots together. Of course, there is also Robin Williams, as a psychiatrist having lost his license because he slept with a «few patients», who provides Kenneth Branagh with much needed advice. His performance is refreshing and as always, right on par.

I must add however that Kenneth Branagh plays the role of the German conductor more convincingly, it is obvious that he is more at ease personifying «tragic heroes»: nevertheless as director, he weaved a web of suspense around the themes of murder, amnesia, hypnotism and reincarnation, succesfully providing many gripping moments.

By the way, it is a love story..... but not a sappy love story. The movie also takes a firm stand against smoking..... anyway, you should see it.



Cont'd from p..2

community and will sponsor a major interdisciplinary conference. There is plenty of time and energy left this year for new and interesting initiatives. We invite you to bring yours along at our next meeting (or drop a note in our mailbox at L.S.A.) or just to come and get involved in a matter which interests you. We are all possessed, as circumstances dictate, of an excellent sense of humour.

Con'd from p.1

standing of the importance of personal experience as a starting point.

Politically, there is an intense sensitivity to any attack upon the victim, which is seen as part of the traditional systemic delegitimization of women and a way of maintaining male power. Further, a finding of innocence would have the negative social consequences of discouraging other victims from coming forward.

Men on the other hand generally do not have any personal experience with sex discrimination, unless they witnessed it or were guilty of it themselves. Among men of good faith, there is empathy with

the man through a process of imagining oneself as falsely accused. Thus, men put much more emphasis on the presumption of innocence for protection. It is not just a matter of not believing women.

Politically, men hear charges of sexism or of sexual aggression as the equivalent of «witch» or «communist» in another age: charges without a defence. The best illustration of this is the case of an uncorroborated accusation: the modes of defence that come to mind — say nothing, prove she has a personal grudge, prove she is insane or unstable, prove it is a misunderstanding — are coextensive with the techniques of the guilty or with systemic means to discredit the victim.

Not much of a choice.

This gulf in perception makes public dialogue virtually impossible. Women think men are attacking the victim. Men think women are insensitive to the possibility of innocence.

The division above is not monolithic. Other factors such as race, religion, age, sexual orientation skew any neat description of political perception.

I haven't mentioned the ugly yet because there may be some agreement on this point. Wherever the cycle begins, the sexual aggression or the false accusation,

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termes: «Reason over passion» pour décrire son approche face à l'exercice de ses fonctions de chef de gouvernement. Il apparaît maintenant clair que cette expression appartient désormais au passé.

Tout comme d'ailleurs de nombreuses initiatives qui, ayant vu le jour sous son règne, ont été abandonnées par ses successeurs. On peut ici faire référence à la désastreuse «Politique Énergétique Nationale» qui fut reléguée aux oubliettes des premiers jours de pouvoir de Brian Mulroney, dans la même veine le nationalisme canadien au plan économique et la politique de la «Troisième Option» visant à réduire la dépendance du Canada face au marché américain furent vite oubliés lorsque s'amorcèrent les négociations canado-américaines devant mener à la ratification de l'accord

de libre-échange.

S'il demeure compréhensible de voir un retraité vanter les mérites du «bon vieux temps», il nous apparaît tous de même curieux de voir une personne s'acharner à réduire en cendres les derniers vestiges de son oeuvre. Ainsi, considérant deux des innovations les plus célèbres de l'ère Trudeau, soit la politique de multiculturalisme et la réforme de la constitution nous considérons quand même bizarre le fait qu'il s'acharne à mettre des bâtons dans les roues de ceux qui voudraient réintégrer le Québec dans le giron constitutionnel. De ce fait il favorise l'option contraire, soit la montée du mouvement souverainiste québécois. Les clivages linguistiques aidant, le Canada n'a jamais été si divisé et désuni au plan culturel. Pourtant la promesse de départ demeurerait à l'effet que le Canada se devait de constituer une société modèle à

ce niveau. Comme s'il était nécessaire de rajouter de l'huile sur le feu les dernières déclarations ont mis en lumière une personnalité déchirée entre son utopie et les constatations que lui dicte son subconscient, c'est-à-dire, adopter une attitude de suicide idéologique.

Où sont passées les belles idées issues de la «Trudeaumanie», nul ne le sait. La seule certitude que nous puissions avoir demeure le fait que leur concepteur, tel un vieux grincheux, s'isole tranquillement dans sa chaise berçante pour ruminer les belles années. Il faudra bien que quelqu'un lui souligne un jour que ce type de comportement ne peut susciter, chez ceux qui l'observent, qu'une consécration de l'opinion à l'effet que le personnage vieillit mal et qu'il est de plus en plus dépassé par les événements.

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ETHNICALLY-BASED CRIME DATA AND THE POLICE

By Alexandra Gillespie, BCL III

On Saturday October 5th, 1991 the Globe and Mail published an article outlining the debate over the collecting and publishing of ethnically based crime data. In Canada, the police forces of the major cities are officially banned from compiling such information.

The debate focuses on two questions. The first being whether the information should be gathered at all, and the second being if the statistics are compiled, for whom should they be published? These questions can be answered differently depending on whether you think that all information is inherently useful or whether you believe that the dangers of misinterpretation of such statistics outweigh their probative value.

In fact, the entire debate may be moot. The Globe and Mail article points out

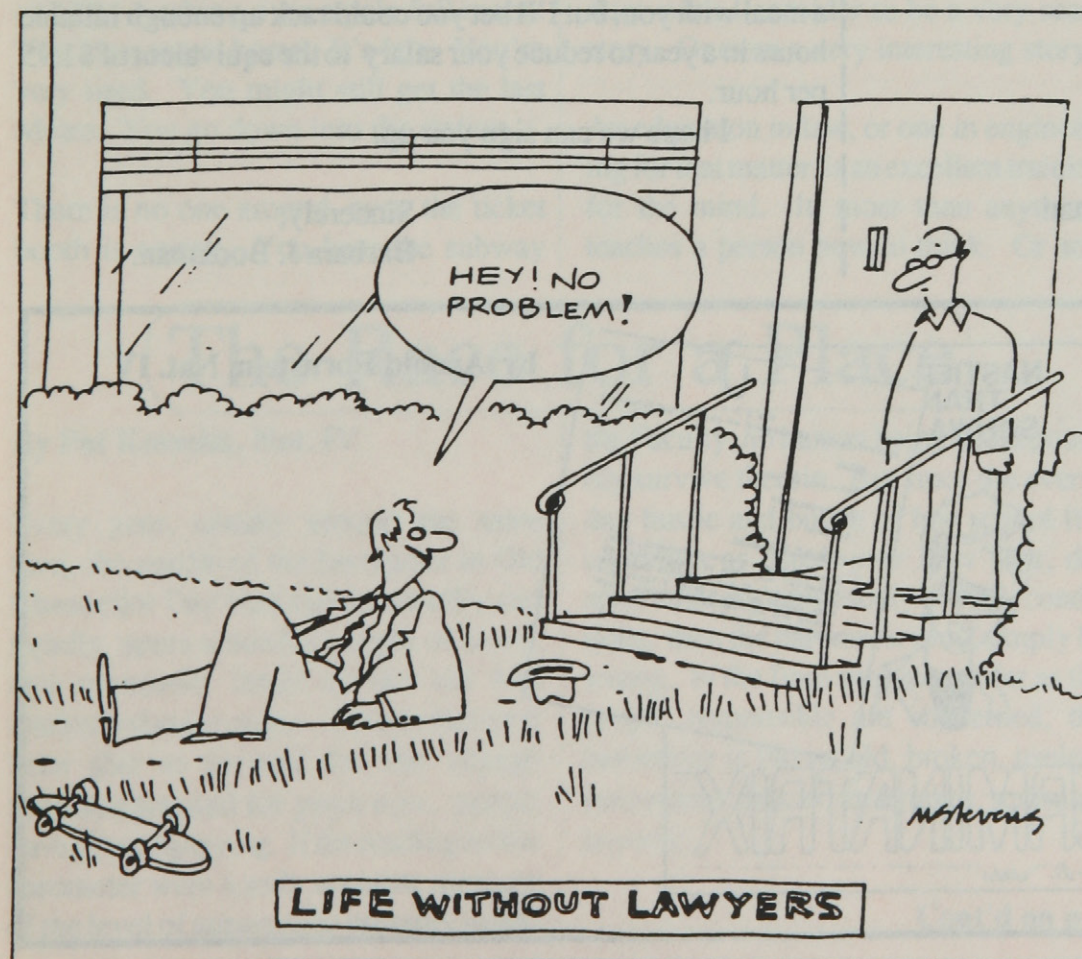
that Statistics Canada does compile information on the ethnic origins of both the crime victims and the suspects, and they publish information on homicide victims and prisoners. Not surprisingly, the source for Statistics Canada data is the Canadian municipal police forces.

If ethnically-based crime statistics are being compiled by police, apparently in order to focus on ethnic gang violence, our attention must turn to questioning how the statistics are gathered and whether they are accurate. If police forces are banned from collecting this information, but in fact do so, at the very least we can be sure that there is no uniform method used across Canada. With no knowledge of how, specifically, such statistics are gathered and used, there is a continuing danger that such data, incorrectly or inconsistently presented, may result in further ethnic stereotyping by police, instead of easing ten-

sions and dispelling myths ever present in adverse society.

A further question arises, which remains unanswered in the Globe and Mail article. If Statistics Canada only publishes information on homicide and prisoners what does it use the data for? It is doubtful that they hand it back to the police, and they do not offer it to the public. These are the two groups who would find the information the most compelling.

Given that the information is there, it seems that it would be wise to make the process of compiling ethnic data public. By regulating the way in which the police in particular collect statistics we can at least ensure that they may be accurate. From there we can move on the more interesting debate over who has access to such information whether it be the public alone, immigration officials or the public in general.



From the National Law Journal.

cont'd from p.4

the result is tragic with no winners, a kind of communal blood pollution.

I am not in the mood to write a conclusion for this article. It should be obvious, though I'm not optimistic of a reconciliation given the conceptually impregnable card-houses built by those who enjoy the comfort of ideologies. I may not be alone, given the silence that follows invitations to discuss sexual politics publicly in the classrooms of this law faculty.

THE «YES» LETTER

No doubt many people are sending out their resumés and are receiving as many answers. But what to make of those so formally written letters? This excerpt out of the book Trials and Tribulations by Daniel R. White might help you.

What the firm said:

QUEEN & SPRAWLING
1 Peachtree Street
Atlanta, Georgia 30319

Mr. James T. Pinch
906 Johnson Hall
Columbia Law School
New York, New York 10027

Dear Mr. Pinch:

I enjoyed talking with you when I was at Columbia. You have an excellent record, and on behalf of the firm I would like to extend you an offer of employment.

We would be pleased to have you visit our offices to meet more of our attorneys. If you would be interested in pursuing this invitation, please call me or our recruitment coordinator Ellen Shady to arrange a mutually convenient time for your visit.

I look forward to hearing from you soon.

Sincerely,
Barbara J. Bookman

What the firm meant:

QUEEN & SPRAWLING
1 Peachtree Street
Atlanta, Georgia 30319

Mr. James T. Pinch
906 Johnson Hall
Columbia Law School
New York, New York 10027

Dear Mr. Pinch:

For a guy from trade school in Harlem, you make quite an impression. Your pale complexion and emaciated physique, combined with your incredible high grade point average, suggest that you are precisely the sort of compulsive, library-loving grind we're looking for.

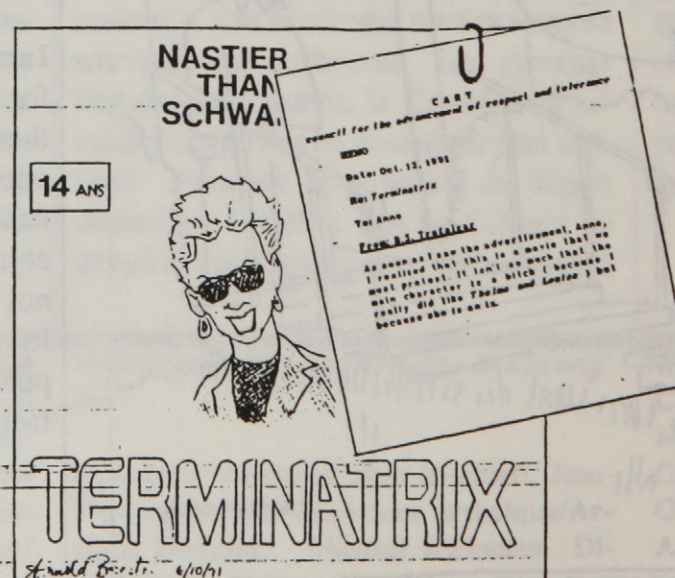
No doubt you will have a lot of offers, because hard-core zealots like you aren't a dime in a dozen. Someone so patently willing to sacrifice his health and social life is a real find.

I wouldn't want to introduce you to a client or have to eat a meal with you, but I'll bet you could rack up enough billable hours in a year to reduce your salary to the equivalent of \$1.95 per hour.

I hope we can sign you up.

Sincerely,
Barbara J. Bookman.

THE PITS



by Arnold Bornstein, Nat. IV